

Message Text

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ACTION L-03

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OSD ALSO PASS TO AI/JA, NAVY JAG, DAJA-IA, DCPA

E.O. 11652: GDS
TAGS: PFOR, PARM
SUBJECT: DIPLOMATIC CONFERENCE ON INTERNATIONAL HUMANITARIAN
LAW--ARTICLE 65, FUNDAMENTAL GUARANTEES

1. CONSULTATIONS ON ARTICLE 65 WHICH WERE CARRIED ON
CONCURRENTLY WITH DRAFTING COMMITTEE WORK RESULTED IN
DRAFT PROPOSAL BY BELGIUM AND SWITZERLAND (POUCHED TO
ALDRICH MARCH 25). FOLLOWING IS UNOFFICIAL TRANSLATION
OF TEXT OF PARAGRAPH 1 FURNISHED BY AUSTRALIAN DELOFF
WHO ATTENDED CONSULTATIONS:

2. QUOTE PERSONS WHO, FOR REASONS RELATING TO THE
ARMES CONFLICT, WOULD NOT RECEIVE MORE FAVORABLE TREAT-
MENT UNDER THE CONVENTIONS AND THE PRESENT PROTOCOL,
SHALL, WITHOUT PREJUDICE TO THE APPLICATIONS OF OTHER
RULES OF INTERNATIONAL LAW, BE TREATED IN ALL CIRCUM-
STANCES WITH HUMANITY AND WITHOUT ANY ADVERSE DISTINCTION
BASED ON RACE, COLOUR, SEX, LANGUAGE, RELIGION OR BELIEF,
POLITICAL OR OTHER OPINION, NATIONAL OR SOCIAL ORIGIN,
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WEALTH, BIRTH OR OTHER STATUS, OR ON ANY OTHER SIMILAR
CRITERIA.

QUOTE THEY ARE ENTITLED TO THE RESPECT OF THEIR
PERSON, THEIR HONOUR, THEIR CONVICTIONS AND THEIR RELIG-
IOUS PRACTICES.

QUOTE THEY SHALL BENEFIT, AS A MINIMUM, FROM THE FOLLOWING PROVISIONS. END QUOTE.

2. AUSTRALIAN, FRG, FRENCH, UK, AND US DELEGATION OFFICERS CONSIDER BELGIAN-SWISS DRAFT TO BE BADLY MUDDLED. THE PHRASE "FOR REASONS RELATING TO THE ARMED CONFLICT/ REFERS TO NON-ENTITLEMENT TO PROTECTED STATUS UNDER CONVENTIONS AND PROTOCOL; NOT TO TREATMENT RELATED TO INDIVIDUAL'S ACTIVITIES IN CONNECTION WITH THE ARMED CONFLICT. THEY BELIEVE THAT, AS USED IN DRAFT, THE PHRASE MEANS NOTHING AND THAT BELGIAN-SWISS DRAFT WOULD APPLY ENTIRE LIST OF RIGHTS TO ALL OF PARTY'S OWN NATIONALS. US DEL CONCERNED THAT PARAGRAPH 2 BELGIAN-SWISS DRAFT WOULD PRECLUDE PERSONS CAPABLE OF FREE AND INFORMED CONSENT FROM VOLUNTEERING TO PARTICIPATE AS SUBJECTS OF MEDICAL AND SCIENTIFIC EXPERIMENTS UNDER GENERALLY ACCEPTED ETHICAL RESEARCH STANDARDS.

3. US DEL OFF BELIEVES THAT DE BRUECKER'S (BELGIAN) CONCERN FOR THE PROTECTION OF UNDETAINED PERSONS AGAINST MURDER, TAKING OF HOSTAGES AND OTHER UNJUSTIFIED ACTS BY AGENTS OF A PARTY, COULD BE MET BY SUBDIVIDING ARTICLE 65 AS FOLLOWS:

(A) PARA 1 - DEFINE SCOPE SO AS TO INCLUDE ALL PERSONS NOT OTHERWISE ENTITLED TO MORE FAVORABLE TREATMENT, INCLUDING A PARTY'S OWN NATIONALS AND INCLUDE A NONDISCRIMINATION CLAUSE;
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(B) PARA 2 - SAFEGUARDS APPLICABLE TO ALL SUCH PERSONS WHETHER COMMITTED BY CIVILIAN OR MILITARY AGENTS. THIS COULD BE MODELED AFTER ARTICLE 6, PARA 2, PROT II. AS A MINIMUM, LIST IN PARA 2 SHOULD INCLUDE MURDER, AGGRAVATED ASSAULTS, THE TAKING OF HOSTAGES AND OUTRAGES UPON PERSONAL DIGNITY. CONSISTENT WITH US POSITION PARAS 2 (B) AND (C), ICRC DRAFT SHOULD BE OMITTED. THIS PARA COULD ALSO MAKE A CROSS REFERENCE TO ARTICLE 10, WHICH PROVIDES FOR NONDISCRIMINATORY TREATMENT OF ALL WOUNDED, SICK AND SHIPWRECKED;

(C) PARA 3 - ENUMERATE SAFEGUARDS APPLICABLE TO PERSONS DETAINED OR OTHERWISE DEPRIVED OF LIBERTY IN ANY WAY FOR REASONS RELATED TO ARMED CONFLICT. THIS COULD INCLUDE SELECTED PROVISIONS OF ARTICLE 8, PROTOCOL II, AS WELL AS PENAL AND JUDICIAL SAFEGUARDS MODELED AFTER ARTICLE 10, PROT. II. SORENSON

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Message Attributes

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